

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LA UNIÓN DEL PUEBLO ENTERO, et al.,

Plaintiffs,

v.

GREGORY W. ABBOTT, et al.,

Defendants.

Civil Action No. 5:21-cv-844 (XR)
(consolidated cases)

JOINT NOTICE REGARDING TRIAL PROCEDURES

Pursuant to this Court's direction at the July 11 status conference, the parties have met and conferred regarding trial procedures in this case. The parties jointly propose the following procedures, which they will incorporate in the proposed Final Joint Pretrial Order to be filed by August 22, 2023. *See* 2d Am. Scheduling Order at 2, ECF No. 579.

1. Opening Statements

The parties will present opening statements of no more than 40 minutes per side. The United States and Private Plaintiffs will divide 40 minutes between their presentations, as will State Defendants, Intervenor Defendants, and any County Defendants offering an opening statement.

2. Admission of Exhibits

In lieu of moving individual exhibits into evidence during trial, the parties agree that disclosure of exhibits shall constitute a request to move such exhibits into evidence. The parties further agree to the use of disclosed exhibits during trial subject to oral and written objections,

and that the Court will rule on oral objections when made and on written objections prior to the close of evidence.

3. Expert Testimony

To facilitate succinct presentation of expert evidence, the parties stipulate to admission of expert reports under Federal Rule of Evidence 807, subject to any further objections in open court, if the expert testifies live or by trial deposition and adopts the statements in the report while under oath and subject to cross examination.

4. Standing Testimony

The parties agree that testimony solely for the purpose of establishing a plaintiff's standing may be offered via out of court statements, except with respect to any testimony for the purpose of establishing standing for a claim against Harris County District Attorney Ogg. Any such testimony may be subject to live cross-examination, upon any party's request. The parties agree to meet and confer further regarding the appropriate medium for such testimony (*e.g.*, deposition designations, declarations, or pre-filed written direct examinations).

5. Witness Appearance and Timing

The parties agree that witnesses with disabilities who may have problems traveling to San Antonio may testify via Zoom or an alternative video conferencing solution. The parties also agree to provide at least 24 hours' notice concerning the witnesses who will be called for examination on a subsequent trial day.

The parties agree to provide at least 48 hours' notice to County Defendants prior to being called for examination, regardless of whether the County Defendants testify in person or via Zoom or an alternative video conferencing solution.

Pursuant to ECF No. 576, County Defendants shall testify on one day, unless testimony the following day is necessitated by the end of proceedings on the day that the relevant County Defendant was called to testify. A County Defendant shall be examined by all parties at the time the official is called to testify (including direct examination, cross examination, and rebuttal), and the official shall not be recalled to testify during the remainder of the trial by any party, absent Court order. To the extent any County Defendant is recalled to testify pursuant to Court order, and subject to the Court's approval, the County Defendants reserve the right to provide any such later-in-time testimony over Zoom or an alternative video communication method.

6. Trial Attendance for County Defendants

Subject to the Court's approval, counsel for County Defendants reserve the right to appear/attend the trial via Zoom or via an alternative video conferencing solution, except for when counsel's respective individual county official(s) is or are testifying in person in San Antonio, in which case counsel will also appear in person in San Antonio.

Subject to the Court's approval, the parties agree that County party representatives and County Defendants' counsel need not attend/appear in person for the entire length of the trial.

7. Matters On Which the Parties Continue to Confer

The parties have agreed to continue to meet and confer regarding the following additional matters:

- Following the disclosure of witness lists, the United States and Private Plaintiffs have agreed to provide State Defendants, Intervenor Defendants, and County Defendants with an estimate of the time needed for presentation of their affirmative cases and cross-examination of defense witnesses by August 11. The parties will notify the Court shortly

thereafter of the estimated total time needed to try this case, absent resolution of some or all claims via summary judgment.

- The non-county parties will confer with counsel for individual county officials concerning the feasibility of testifying in person in San Antonio and to discuss any potential need to testify via Zoom or an alternative video conferencing solution.
- The parties will confer concerning deadlines for disclosure of demonstratives.
- The parties will confer regarding any additional trial procedures that will streamline the presentation of evidence and the Court's consideration of this matter.

Respectfully submitted,

Date: July 28, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2023, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

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